Supreme Court, U.S.
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No. 92-871

In The

Supreme Court of the United States

October Term, 1992

IN RE: GRACE R. MASSETT,
Deceased.

ROBERT N. WEICHERT,
Petitioner,

vs.

ELAINE W. ROBERTS,
Respondent.

On Petition For Writ Of Certiorari
To The Fourth District Court Of Appeals
State Of Florida

BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

Petitioner's objection to the final accounting, which he claims he did not have sufficient time to challenge, makes no specific objection except a complaint about some furniture (H 1). This estate was worth a total of $170,000. The personal representative was seeking $3,600 compensation for 120 hours work (O 2). The attorney for the personal representative, James W. Nowlin, Jr., sought a fee of $9,000 for 45 hours of work he performed in connection with the estate, and $1,460 for 7.3 hours of work performed by Klein & Walsh in connection with defending appellant's prior appeals (Q 1). The court awarded those fees after a hearing of which appellant received timely notice but did not attend, and appellant appealed that order to the Fourth District Court of Appeal, State of Florida. That court affirmed without writing an opinion.

SUMMARY OF ARGUMENT

Petitioner was afforded adequate notice in compliance with Florida Rules of Procedure and due process. This petition should be denied.

ARGUMENT

Petitioner's statement of the case and appendix demonstrates that he received the notice of hearing at least six days prior to the hearing. It was mailed to the address he

gave for service of papers throughout this proceeding 12 days prior to the hearing.

Under Florida Probate Rule 5.042(c), petitioner was entitled to "reasonable" notice. His argument on page 19 that he was entitled to 20 days notice is incorrect. The 20 days notice required under Florida Probate Rule 5.040 is for the *first* notice required in adversary proceeding in probate cases, but not the type of notice required thereafter. Florida Probate Rule 5.042(c).

CONCLUSION

The mailing of a notice of hearing 12 days prior to a hearing, and the receipt of such notice 6 days prior to the hearing, is reasonable notice, and not a denial of due process or any other constitutional right. The petition for certiorari should be denied.

Respectfully submitted,

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